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## **REQUEST FOR PROPOSALS (RFP) FOR DESIGN SERVICES**

### **Loomis Street Traffic Calming**

Date of Issuance: November 18, 2015

Issued by: City of Burlington Department of Public Works

Due Date for Proposals: December 10, 2015 at 2:00 PM

Issuing Point of Contact:

Martin Lee, P.E., Engineer, Burlington Public Works  
645 Pine Street, Burlington, VT 05401  
802.540-0557 (w) or 802.497-7021 (c)  
mlee@burlingtonvt.gov

### **INTRODUCTION AND GENERAL SCOPE OF WORK**

The City of Burlington is seeking proposals from qualified firms to provide design services for traffic calming infrastructure proposed on Loomis Street. The proposed traffic calming project includes the implementation of:

- corner neckdowns at the intersection of Weston / Loomis Streets, and
- a bumpout on Loomis Street across from Weston Street, and
- corner neckdowns at the intersection of North Prospect / Loomis Street, and
- a speed hump at house #166, and
- an enhanced crosswalks on Loomis Street at North Prospect, North Willard Street, and on Weston Street at Loomis.

The conceptual figures in this RFP depict the approximate location of proposed traffic calming infrastructure (note the speed bump is not shown). The traffic calming features have been developed through a public process and the conceptual designs are not suitable for construction. The selected contractor is expected to use the most up to date traffic calming design guidelines to develop a design that is suitable for public bidding. Design guidelines include but are not limited to:

- VTrans 2011 Standard Specifications
- VTrans Standard Drawings
- NACTO Urban Street Design Guide
- FHWA and ITE traffic calming design guidelines

The designer is expected to meet with the City and incorporate additional city design criteria.

For example, Turning radii of the Burlington Fire Department trucks need to be evaluated.

The City is planning to have the traffic calming project designed prior to the spring construction season of 2016. Dependent on the availability of City funds, this project may be bid in two phases or in one phase. Contract plans shall be developed so portions of the project can be bid separately.

Design coordination will be expected to allow for integration of possible stormwater improvements within proposed green spaces. The cost of stormwater improvement design will not be part of this design contract. The selected design engineer will be expected to collaborate and share files with other consulting engineers who may be doing stormwater design work. Stormwater treatment features, designed by others, may be integrated into construction documents and included as a bid alternate for this project.

The City is looking in general for the following tasks to be included in the proposal's scope of work:

### **DESIGN PHASE SERVICES**

1. Project Kickoff: meeting with Burlington and obtaining all pertinent background information
2. Site Survey Work: Survey to include infrastructure pertinent to project design, extents of city right of way and property lines.
3. Project Development: Review existing information and develop a basemap in CAD
4. Conceptual Plans: Develop a draft design drawing set for the proposed traffic calming infrastructure.
5. Cost Estimate: develop a detailed project construction cost estimate
6. Final Bid Documents: Finalize design documents based on feedback from the City. The bid documents shall include stamped drawings and specifications suitable for bidding. The City will provide standard contract provisions to be included with technical specifications.

### **BID PHASE AND CONSTRUCTION ADMINISTRATION SERVICES**

Bid Phase and Construction Administration Services shall not be initiated without written approval from the City. Burlington will administer the bids, but we anticipate the following tasks from the design engineer:

1. Pre-bid meeting attendance
2. Assistance with answering contractor questions and completing a bid addendum
3. Review bids and assist with recommending a contractor. Once bids are opened, the consultant will confirm that all required components of the bid have been submitted. The consultant will conduct an analysis of the bids and will provide a recommendation to the municipality and VTrans on award of the contract after review of the bids. The bid analysis will generally follow FHWA's Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation dated January 20, 2004. This can be found at <http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>.
4. Attendance at preconstruction meeting
5. Submittal Review
6. Answering the contractor's requests for information
7. Attendance to construction meetings (assume attendance at 2 meetings)
8. Assistance with final inspection and project certification (Design engineer will not be

- performing construction oversight under this proposal)
9. Completing as-built drawings.

### **ADDITIONAL CITY SUPPLIED DATA/EFFORT**

Conceptual plan in PDF form.

### **DEADLINE FOR RECEIPT OF PROPOSALS**

All replies and proposals in response to the Invitation for Bids must be received in a sealed envelope clearly marked **Loomis Street Traffic Calming Project** to the address and point of contact no later than **2:00 p.m.** on the above due date ~~at which time all submitted proposals will be opened and recorded.~~ Late proposals will not be accepted. Electronic proposals are preferred as long as they are received by the point of contact by the required deadline.

### **ANSWERS TO QUESTIONS AND REVISIONS TO INVITATION TO BID**

Due date for questions is 5 p.m. on December 4, 2015. Any revisions, addendums and answers to questions received by the due date for questions will be sent to contractors. ~~In addition, revisions will be posted on the City's RFP web page <http://burlingtonvt.gov/RFP/>. It is advised that consultants sign up for the GovDelivery notification so that they will be notified of any changes to the RFP page.~~

### **SITE VISIT**

~~A site visit to this location is **mandatory** for this project. This site visit will take place on **September, 2015 at 3:00 PM** at the site. Bids received that did not appear at the site visit will not be considered.~~

### **PARTNERSHIPS**

Contractors may team up with other firms, local or otherwise, in order to provide whatever diversity is deemed necessary for completing the project tasks.

### **PROPOSAL FORMAT**

Contractors are encouraged to be concise. All proposals must include, but are not limited to the following:

1. Provide signed and notarized attachment B, C and D from draft Agreement.
2. Cost proposal with estimated start/end dates, and signature by authorized representative for the firm. Costs shall be clearly split between the different phases.
3. Letter of Transmittal and two copies of the proposal if sent through the mail. If sent electronically, all documents shall be in .pdf format.
4. Proposed scope of work.
5. A brief description of your firm's history and experience with related projects. If your firm intends to partner with another company, also provide pertinent information on the subcontractor.
6. A work history of up to three (3) related projects showing for each:
  - a. Name, address and phone number for each client.
  - b. Brief project description.
  - c. Statement as to whether project was completed on time and within budget.
7. Location of the office from which the management of the project will take place.

### **PROPOSAL EVALUATION**

Proposals will be reviewed and evaluated by Department staff based on the information provided in the proposal. Additional information may be requested prior to final selection. It is anticipated that a decision will be made within 30 days of the due date. The selected contractor

shall be willing to enter into an agreement with the Owner similar to the following Draft Agreement.

### **CONTRACT REQUIREMENTS**

Contractors are advised to review the Draft Agreement, the Specifications for Contractor Services (Attachment A), the Livable Wage, Outsourcing Policy, and Union Deterrence Ordinances (Attachment B,C, and D respectively) in advance of submitting a proposal. The City of Burlington reserves the right to alter or amend any or all of these provisions in the project contract.

### **INDEMNIFICATION**

The Contractor will act in an independent capacity and not as officers or employees of the Municipality. The Consultant shall indemnify, defend and hold harmless the Municipality and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the Contractor's acts and/or omissions in the performance of this contract.

The Municipality is responsible for its own actions. The Contractor is not obligated to indemnify the Municipality or its officers, agents and employees for any liability of the Municipality, its officers, agents and employees attributable to its, or their own, negligent acts, errors or omissions.

### **LIMITATIONS OF LIABILITY**

The City of Burlington, Vermont assumes no responsibility and liability for costs incurred by parties responding to this Request for Proposals or responding to any further requests for interviews, additional data, etc., prior to the issuance of the contract.

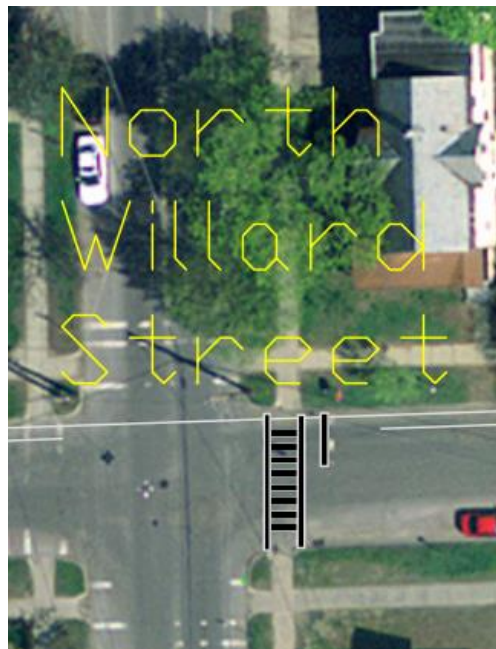
### **REJECTION OF PROPOSALS**

The City of Burlington reserves the right to reject any or all proposals, to negotiate with one or more parties, or to award the contract in the City's best interests, including proposed contractor's schedule. The City reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals.

### **OWNERSHIP OF DOCUMENTS**

Proposals, plans, specifications, basis of designs, electronic data, designs and reports prepared under any agreement between the selected contractor or consultant and the city shall become the property of the City. Records shall be furnished to the City by the Contractor upon request at any time, however the Contractor or Consultant may retain copies of the original documents.





## **DRAFT AGREEMENT**

### **CITY OF BURLINGTON, VERMONT CONTRACT AGREEMENT FOR ENGINEERING SERVICES**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Burlington, VT, hereinafter referred to as the CITY and \_\_\_\_\_, a Vermont corporation, with its principal place of business in \_\_\_\_\_, hereinafter referred to as the CONSULTANT.

The CITY wishes to employ the CONSULTANT for Design Engineering Services for the Loomis Street Traffic Calming Project in Burlington, Vermont.

WHEREAS the CONSULTANT is ready, willing, and able to perform the required services;

NOW THEREFORE, in consideration of these premises and the mutual covenants herein set forth, it is agreed by the parties hereto as follows:

#### **1. SCOPE OF WORK**

The CONSULTANT shall provide services necessary to ensure the successful completion of the project under consideration as set forth in Request for Proposals from the Department of Public Works dated November 18, 2015 and CONSULTANT'S Proposal dated \_\_\_\_\_, which are incorporated herein and made a part of this Agreement. The outcome of this work is the completion of design engineering services for the Loomis Street Traffic Calming Project.

Should it become necessary for the CONSULTANT to procure sub-consultant services, this selection will be subject to approval. It is expected that any solicitations by the CONSULTANT will include reference to the Federal Equal Employment Opportunity (Executive Order 11246), the FHWA Title VI Non-Discrimination Program, Vermont Agency of Transportation's Disadvantaged Business Enterprises Policy (CA-110) and the CITY'S Livable Wage Ordinance.

#### **2. BEGINNING OF WORK AND TERMINATION**

This Agreement shall be effective upon execution and shall be completed on or before December 31, 2017.

#### **3. THE AGREEMENT FEE**

A. General. The CITY agrees to pay the CONSULTANT and the CONSULTANT agrees to accept as full compensation for performance of all services and expenses (including those of sub-consultants) encompassed under this Agreement, payment at the rates specified under the CONSULTANT'S scope of services and submitted to the CITY in CONSULTANTS Proposal dated \_\_\_\_\_.

B. Maximum Limiting Amount. The total amount to be paid to the CONSULTANT for all services shall not exceed a maximum limiting amount of \$\_\_\_\_\_, without duly authorized written approval.

#### 4. PAYMENT PROCEDURES

One copy of each invoice and backup documentation for expenses shall be submitted to:

Martin Lee, P.E.  
Municipal Project Manager  
Department of Public Works  
645 Pine Street  
Burlington, VT 05401

#### 5. ATTACHMENTS

The following attachments are adopted by reference and made part of this Agreement:

ATTACHMENT A – City of Burlington Specifications for Contractor Services

ATTACHMENT B – Insurance Certificate(s) from CONSULTANT

ATTACHMENT C – Livable Wage Ordinance Form

ATTACHMENT D – Department of Public Works, Request for Proposals, Loomis Street Traffic Calming Project, dated \_\_\_\_\_.

ATTACHMENT E – CONSULTANT’S Proposal, Loomis Street Traffic Calming Project, dated \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**City of Burlington, Vermont**

By: \_\_\_\_\_  
Chapin Spencer, Director of Public Works

Date: \_\_\_\_\_

*Approved as to form and substance by the City Attorney Office:*

\_\_\_\_\_

\_\_\_\_\_  
*Date*



## APPENDIX

City of Burlington:  
Specifications for Contractor Services  
Special Conditions  
Livable Wage Ordinance

**ADDITIONAL CONTRACT PROVISIONS ATTACHMENT A:**

***Specifications for Contractor Services***

**Includes:**

- 1. ABBREVIATIONS AND DEFINITIONS**
- 2. INDEMNIFICATION**
- 3. INSURANCE**
- 4. COMPLIANCE WITH LAWS**
- 5. CONTRACTUAL AGREEMENTS**
- 6. OPERATIONAL STANDARDS**
- 7. PROJECT DEVELOPMENT AND STANDARDS**
- 8. PAYMENT FOR SERVICES RENDERED**
- 9. AUDIT REQUIREMENTS**
- 10. SECRETARY OF STATE**

Note: The provisions stated herein shall prevail unless modified by the terms of the Special conditions

**November 2015**

## ***Section 1: ABBREVIATIONS AND DEFINITIONS***

Wherever used in these Specifications for Contractor Services or in any documents that these specifications pertain to or govern; abbreviations may be used in place of a word or phrase and definitions may be used to interpret statements for the meaning of words, phrases or expressions. The intent and meaning for abbreviations and definitions shall be interpreted as herein set forth:

### **1.01 ABBREVIATIONS.**

CADD	Computer Aided Drafting and Design
CFR	Code of Federal Regulations
CPM	Critical Path Method
CSC	Contractor Selection Committee
DBE	Disadvantaged Business Enterprise
EDM	Electronic Data Media
FTP	File Transfer Protocol
LOI	Letter of Interest
RFP	Request for Proposals
SOW	Scope of Work
U.S.C.	United States Code
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
VOSHA	Vermont Occupational Safety and Health Administration
V.S.A.	Vermont Statutes Annotated
VTrans (VAOT)	Vermont Agency of Transportation

**1.02 DEFINITIONS.** Wherever in these specifications or in other contract documents the following terms or pronouns in place of these are used, the intent and meaning shall be interpreted as follows, unless that context makes clear that another meaning is intended:

**ACCEPTANCE:** (Reviews-Acceptances) The Municipality's determination that a deliverable meets the requirements of the contract. The Municipality's determination shall prevail in the interpretation of acceptability.

**ACCEPTANCE DATE:** The date of the written notice to the contractor by the Project Manager that the project is complete and final payments, if applicable, have been approved as provided by the contract.

**AGENCY:** State of Vermont, Agency of Transportation, also referred to as VAOT or VTrans.

**AGREEMENT:** See CONTRACT.

**AMENDMENT:** A change to a contract that has been reviewed and approved, by signed document, by all parties to the contract.

**AUDIT:** An examination of the financial accounting and record systems of an entity in accordance with Generally Accepted Governmental Auditing Standards (yellow book), applicable accounting principles, and contract terms.

**CALENDAR DAY:** A day as shown and sequenced on the calendar, beginning and ending at midnight, as differentiated from work days or other intermittent time references.

**COMPETITIVE NEGOTIATION:** A means of procurement involving negotiations, based on qualifications, as described in Title IX of Federal Property and Administrative Services Act of 1949, or the formal procedure permitted by Title 19 V.S.A. Section 10a. Any competitively procured contract awarded without using a sealed bid process is considered a negotiated contract.

**CONTRACT:** A written contract between the Municipality and another legally distinct entity for the provision of service(s) and/or product(s). The term contract includes all such contracts whether or not characterized as a “contract”, “agreement”, “miscellaneous contract”, “letter of agreement”, “amendment” or other similar term.

**CONTRACTOR:** An individual or legally distinct entity providing contractual services and/or products directly to the Municipality.

**DIRECTOR:** A Division manager within the Agency who reports directly to Vermont’s Secretary of Transportation.

**DIVISION:** A major component of the Agency, headed by a member of the Agency’s executive staff. Each Division is subdivided into Sections and Units.

**ENGINEERING AND DESIGN RELATED SERVICES:** Means program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a construction project.

**EXTRA WORK OR ADDITIONAL SERVICES:** Services determined to be required that are not specified in a contract.

**FIXED FEE:** A specific amount of money to be paid in addition to the hourly or other rates for the work performed pursuant to a contract which is determined by taking into account the size, complexity, duration, and degree of risk involved in the work. Overruns in the work and/or the duration of the work shall not warrant an increase in the fixed fee.

**OVERTIME PREMIUM RATE:** Time and one-half or some other multiple for hours worked in excess of 40 hours in a workweek or for hours worked on weekends, holidays, and other times when work is not generally performed.

**PROGRESS PAYMENTS:** Partial payments made for services performed under the contract as the work progresses, at intervals and within limitations designated in the contract.

**PROGRESS REPORT:** A comprehensive narrative, graphic and/or tabular document/report, whether in hard copy or electronic format, indicating actual work accomplished by the contractor.

**PROJECT:** All activities performed and expenditures made to accomplish a specific goal. A contract may encompass part of, or more than, one project.

**PROJECT MANAGER (LOCAL PROJECT MANAGER):** A Municipal representative responsible for administrative management of a project and coordination of all activities related to the project, including the contract(s) to accomplish the goals of the project.

**SCOPE OF WORK:** A detailed description of all services and actions required of a contractor in a contract.

**STATE:** The State of Vermont as represented through and by the Vermont Agency of Transportation.

**SUBCONTRACTOR:** An individual or legally distinct entity to whom or which the contractor sublets part of the work.

**VALUABLE PAPERS:** Material bearing written or printed information of importance, utility or service relating to a project or contract. Electronic information is also included.

**WORK:** The furnishing of all labor, materials, equipment, and/or incidentals necessary or convenient to the successful completion of the contract and carrying out of the duties and obligations imposed by the contract.

## ***Section 2: INDEMNIFICATION***

**2.01 INDEPENDENCE, LIABILITY.** The Contractor agrees, to the fullest extent permitted by the law, that it shall indemnify and hold harmless the Municipality, its officers, agents and employees from liability for damages to third parties, together with costs, including attorney's fees, incurred in defending such claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of the Contractor, its agents or employees, committed, in the performance of professional services to be provided under this Agreement.

The Municipality is responsible for its own actions. The Contractor is not obligated to indemnify the Municipality or its officers, agents and employees for any liability of the Municipality, its officers, agents and employees attributable to its, or their own, negligent acts, errors or omissions.

In the event the Municipality, its officers, agents or employees are notified of any claims asserted against it or them to which this indemnification clause may apply, the Municipality or its officers, agents and employees shall immediately thereafter notify the Contractor in writing that a claim to which the indemnification agreement may apply has been filed.

## ***Section 3: INSURANCE***

**3.01 GENERAL.** Prior to beginning any work pursuant to a contract, the Contractor shall have the required insurance coverages in place. The certificate(s) of insurance coverage shall be documented on forms acceptable to the Municipality. Compliance with minimum limits and coverages, evidenced by a certificate of insurance showing policies and carriers that are

acceptable to the Municipality, must be received prior to the effective date of the contract. The insurance policy(ies) shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the Municipality. If the contract is for a period greater than one year, evidence of continuing coverage must be submitted to the Municipality on an annual basis. Certified copies of any insurance policies may be required. Each policy shall name the Municipality and the State of Vermont as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.

The contractor shall:

- (a) Verify that all subcontractors, agents or workers meet the minimum coverages and limits;
- (b) Maintain current certificates of coverage for all subcontractors, agents and/or workers;
- (c) Where appropriate, verify that all coverages include protection for activities involving hazardous materials; and
- (d) Verify that all work activities related to the contract are covered with at least the following minimum coverages and limits.

**3.02 WORKERS COMPENSATION.** With respect to all operations performed, the Contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

**3.03 GENERAL LIABILITY AND PROPERTY DAMAGE.** (See Special Conditions) ~~With respect to all operations performed under the contract, the Contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:~~  
~~Premises—Operations~~  
~~Products and Completed Operations~~  
~~Personal Injury Liability~~  
~~Contractual Liability~~

~~The policy shall be on an occurrence form and limits shall not be less than:~~  
~~\$1,000,000 Per Occurrence~~  
~~\$1,000,000 General Aggregate~~  
~~\$1,000,000 Products/Completed Operations Aggregate~~  
~~\$ 50,000 Fire/ Legal/Liability~~

~~The Contractor shall name the Municipality and State of Vermont, and their officers and employees, as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.~~

**3.04 AUTOMOTIVE LIABILITY.** The Contractor shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

The Contractor shall name the Municipality and State of Vermont, and their officers and employees, as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.

No warranty is made that the coverages and limits required are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that must be met to protect the interests of the Municipality.

**3.05 VALUABLE PAPERS AND RECORDS INSURANCE.** The contractor shall carry valuable papers insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other information or data relating to the work, whether supplied by the Municipality or developed by the contractor, subcontractor, worker or agent, in the event of loss, impairment or destruction. Such coverage shall remain in force until the final plans as well as all related materials have been delivered by the contractor to, and accepted by, the Municipality.

Unless otherwise provided, Valuable Papers and Records Insurance shall provide coverage on an "individual occurrence" basis with limits in the amount of one hundred and fifty thousand dollars (\$150,000) when the insured items are in the contractor's possession, and in the amount of forty thousand dollars (\$40,000) regardless of the physical location of the insured items.

**3.06 RAILROAD PROTECTIVE LIABILITY.** ~~When the contract requires work on, over or under the right of way of any railroad, the contractor shall provide and file with the Municipality, with respect to the operations that it or its subcontractor perform under the contract, Railroad Protective Liability Insurance for and on behalf of the railroad as named insured, with the Municipality and State of Vermont named as additional insured, providing for coverage limits of:~~

- (a) ~~not less than two million dollars (\$2,000,000) for all damages arising out of any one accident or occurrence, in connection with bodily injury or death and/or injury to or destruction of property; and~~
- (b) ~~subject to that limit per accident, a total (or aggregate) limit of six million dollars (\$6,000,000) for all injuries to persons or property during the policy period.~~

~~If such insurance is required, the contractor shall provide a certificate of insurance showing the minimum coverage indicated above to the Municipality prior to the commencement of railrelated work and/or activities, and shall maintain coverage until the work and/or activities is/are accepted by the Municipality~~

**3.07 PROFESSIONAL LIABILITY INSURANCE.** (See Special Conditions)

- (a) ~~**General.** When performing "engineering and design" related services, or upon the request of the State or Municipality, the contractor shall carry~~



~~architects/engineers professional liability insurance covering errors and omissions made during performance of contractual duties with the following minimum limits:~~

~~\$2,000,000 Annual Aggregate~~

~~\$2,000,000 Per Occurrence~~

- (b) ~~**Deductibles.** The contractor shall be responsible for any and all deductibles.~~
- (c) ~~**Coverage.** Prior to performing any work, the contractor shall provide evidence of professional liability insurance coverage defined under this Section. In addition, the contractor shall maintain continuous professional liability coverage for the period of the contract and for a period of five years following substantial completion of construction.~~

## ***Section 4: COMPLIANCE WITH LAWS***

**4.01 APPLICABLE LAW:** This Agreement will be governed by the laws of the State of Vermont.

### **4.02 GENERAL COMPLIANCE WITH LAWS; RESPONSIBILITY FOR VIOLATION.**

The contractor shall observe and comply with all federal, state, and municipal laws, bylaws, ordinances, and regulations in any manner affecting the conduct of the work and the action or operation of those engaged in the work, including all such orders or decrees as exist at present and those which may be enacted, adopted, or issued later by bodies or tribunals having any jurisdiction or authority over the work; and the contractor shall defend, indemnify and save harmless the State, any affected railroad(s), and any affected municipality(ies), and all their officers, agents, and employees against any claim or liability arising from or based on the violation of any such law, bylaws ordinances, regulations, order, or decree, whether by the contractor in person, its employee(s), or by the contractor's subcontractor(s) or agent(s), or employee(s) or agents thereof.

If the contractor discovers any provision(s) in the contract contrary to or inconsistent with any law, ordinance, regulation, order, or decree, the contractor shall immediately report it to the Local Project Manager in writing.

In particular, but not limited thereto, the contractor's attention is directed to the various regulations promulgated and enforced by the United States, VOSHA, environmental protection, and other resource agencies.

The Contractor shall comply with all applicable Federal, State and local laws.

**4.03 SEVERABILITY.** Provisions of the contract shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both parties. If for any reason a provision in the contract is unenforceable or invalid, that provision shall be deemed severed from the contract, and the remaining provisions shall be carried out with the same force and effect as if the severed provisions had never been a part of the contract.

**4.04 DEBARMENT CERTIFICATION.** By signing a contract, the contractor certifies to the best of its knowledge and belief that neither it nor its principals:

- (a) Is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any state/federal agency;
- (b) Are not presently suspended, debarred, voluntarily excluded or determined ineligible by any federal/state agency;
- (c) Do not have a proposed debarment pending; and
- (d) Have not been indicted, convicted, or had a civil judgment rendered against him/her/it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Exceptions will not necessarily result in denial or termination of the contract, but will be considered in determining the contractor's responsibility. The contract shall indicate any exception, identify to whom or to what agency it applies, and state the date(s) of any and all action(s). Providing false information may result in criminal prosecution and/or administrative sanctions.

**4.05 LOBBYING.** The contractor certifies, by signing the contract, that to the best of its knowledge, belief, and ability:

- (a) No state/federal appropriated funds have been paid or will be paid by or to any person influencing or attempting to influence an officer or employee of a government agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any state/federal contract, the making of any state/federal grant, the making of any state/federal loan, the entering into of any cooperative agreement, or the extension, renewal, amendment or modification of any state/federal contract grant, loan or cooperative agreement.
- (b) If any funds, other than state/federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any state/federal agency, a member of Congress, or an employee of a member of Congress in connection with this state/federal contract grant loan, or cooperative agreement, the contractor shall complete and submit Standard FormLLL "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (c) That it shall require that the language of this Certification be included in the award documents for all sub awards at all tiers (including subcontractors, subgrants and agreements under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact, upon which reliance was placed when the contract was made or entered into. Submission of this certification is a prerequisite for making or entering into the contract, imposed by Title 31, Section 1352 U.S.C.

For any contract utilizing funds from the Federal Transit Administration (FTA) totaling more than One Hundred Thousand Dollars (\$100,000) a separate lobbying certificate must be filled out, signed, and submitted by the contractor, at the time of the contract award. The Municipality will provide the certificate to contractors who are required to comply with this obligation. It is the Contractor's responsibility to complete and submit the form. Failure of the municipality to provide the form does not alleviate the Contractor's responsibility.

#### **4.06 DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY REQUIREMENTS.**

Under the terms of the contract, the expression referred to as DBE shall be considered equivalent to the Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) as defined under 49 CFR Part 26.

(a) Policy: It is the policy of the USDOT that DBEs shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.

(b) DBE Obligation: The Municipality and its contractors agree to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. The Municipality and its contractors shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of USDOT assisted contracts.

(c) Sanctions for Noncompliance: The contractor is hereby advised that failure of a contractor or subcontractor performing work under this contract to carry out the requirements established under Sections 4.06 (a) and (b) shall constitute a breach of contract and, after notification by the Municipality, may result in termination of this contract by the Municipality or such remedy as the Municipality may deem appropriate.

(d) Inclusions in Subcontracts: The contractor shall insert the following DBE policy requirements in each of its subcontracts and shall insert a clause requiring its subcontractors to include these same requirements in any lower tier subcontracts that the subcontractors may enter into, together with a clause requiring the inclusion of the DBE policy requirements in any further subcontracts that may in turn be made:

“The contractor or subcontractor shall not discriminate on the basis of race, color, sex, or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and

administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contractor deems appropriate.”

This DBE policy must be included in all subcontracts, and shall not be incorporated by reference.

(e) VAOT Annual DBE Goal: VAOT sets an overall annual goal for DBE participation on federally funded contracts, that is reviewed and revised each year, in accordance with the requirements of 49 CFR Section 26.45. For the specification of the overall annual DBE goal and an explanation of goal-setting methodology, contractors are directed to the VAOT DBE webpage at <http://www.aot.state.vt.us/CivilRights/DBE.htm>.

**4.07 CIVIL RIGHTS, EQUAL EMPLOYMENT OPPORTUNITY AND AMERICANS WITH DISABILITIES ACT.** During performance of the contract, the contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, ancestry, sex, creed, sexual orientation, national origin, physical or mental condition, disability or place of birth.

The contractor shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, and Executive Order 11246 as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR chapter 60). The contractor shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulations 49 CFR Part 21 through Appendix C. Accordingly, all subcontracts shall include reference to the above.

The contractor shall comply with all the requirements of Title 21, V.S.A., Chapter 5, Subchapter 6, relating to fair employment practices to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Contractor under this Agreement. Contractor further agrees to include this provision in all subcontracts

**4.08 ENVIRONMENTAL REGULATIONS.** Any contract in excess of one hundred thousand dollars (\$100,000.00) shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. Part 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. Part 1368), Executive Order 11738, and Environmental Protection Agency regulation (40 CFR Part 15), that prohibit the use, under non-exempt federal contracts, grants or loans, of facilities included on the EPA list of Violating Facilities. The provisions require reporting of violations to the state, Agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

In the event of conflict between these environmental requirements and pollution control laws, rules, or regulations of other federal, state, or local agencies, the more restrictive laws, rules, or

regulations shall apply.

**4.09 FALSE STATEMENTS.** To assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law (see, e.g., 18 U.S.C. 1020) as well as the laws of the State of Vermont.

**4.10 PROMPT PAYMENT.**

- (a) The contractor, by accepting and signing the contract, agrees to fully comply with the provisions of 9 V.S.A. Chapter 102, also referred to as Act No. 74 of 1991 or the Prompt Payment Act, as amended. This will apply whether or not the contract falls under the literal provisions of 9 V.S.A. Chapter 102.

In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary contract, payments shall be made within seven days from receipt of a corresponding progress payment by the Municipality to the contractor, or seven days after receipt of a subcontractor's invoice, whichever is later. Failure to comply constitutes a violation of this contract.

Violations shall be reported to the VTrans Office of Civil Rights for review. Failure to resolve disputes in a timely manner will result in a complaint made to the Agency's Chief of Contract Administration. In the Agency's judgment, appropriate penalties may be invoked for failure to comply with this specification. Penalties may include debarment or suspension of the ability to submit proposals.

- (b) The requirements of Section 4.10a must be included in all subcontracts.

**4.11 CHILD SUPPORT PAYMENTS:** By signing the Contract the Contractor certifies, as of the date of signing the Agreement, that they are (a) not under an obligation to pay child support; or (b) is under such an obligation and is in good standing with respect to that obligation; or (c) has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan. If the Contractor is a sole proprietorship, the Contractor's statement applies only to the proprietor. If the Contractor is a partnership, the Contractor's statement applies to all general partners with a permanent residence in Vermont. If the Contractor is a corporation, this provision does not apply.

**4.12 TAX REQUIREMENTS:** By signing the Agreement, the Contractor certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, he/she is in good standing with respect to payment, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of signature on the Agreement.

**4.13 ENERGY CONSERVATION:** The Contractor shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan

issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

## ***Section 5: CONTRACTUAL AGREEMENTS***

**5.01 ENTIRE AGREEMENT:** This Agreement represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect

**5.02 ADMINISTRATION REQUIREMENTS.** By signing the contract the contractor agrees to comply with the following provisions and certifies that the contractor is in compliance with the provisions of 49 CFR Part 18.36 – Procurement,(i)- Contract Provisions, with principal reference to the following:

- (a) MUNICIPALITY’S OPTION TO TERMINATE. The contract may be terminated in accordance with the following provisions:
  - (1) Breach of Contract: Administrative remedies - the Municipality may terminate the contract for breach of contract. Termination for breach of contract will be without further compensation to the contractor.
  - (2) Termination for Cause: Upon written notice to the contractor, the Municipality may terminate the contract, as of the date specified in the written notice by the Municipality, if the contractor fails to complete the designated work to the satisfaction of the Municipality within the time schedule agreed upon. The contractor shall be compensated on the basis of the work performed and accepted by the Municipality at the date of termination.
  - (3) Termination for Convenience: The Municipality may, at any time prior to completion of services specified under the contract, terminate the contract by submitting written notice to a contractor fifteen (15) days prior to the effective date, via certified or registered mail, of its intention to do so.

When a contract is terminated for the Municipality’s convenience, payment to the contractor will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made.

When the Municipality terminates the contract for its convenience, the Municipality shall make an equitable adjustment of the contract price, but in doing so shall include no payment or other consideration for anticipated profit on unperformed services.

However, if a notice of termination for convenience is given to a contractor prior to completion of twenty (20) percent of the services provided for in the contract (as set forth in the approved Work Schedule

and Progress Report) the contractor will be reimbursed for that portion of any reasonable and necessary expenses incurred to the date of the notice of termination that are in excess of the amount earned under the approved fees to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the Municipality's approval.

The contractor shall make no claim for additional compensation against the Municipality by reason of such termination.

- (4) Lack of Funding: If postponement, suspension, abandonment, or termination is ordered by the Municipality because it lacks sufficient funding to complete or proceed with the project, the contractor may not make a claim against the Municipality in any form or forum for loss of anticipated profit.
- (b) Proprietary Rights: If a patentable discovery or invention results from work performed under the contract, all rights accruing from such discovery or invention shall be the sole property of the contractor. The State, the Municipality, and the United States Government shall have an irrevocable, nonexclusive, non-transferable, and royalty free license to practice each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the contract.
- (c) Publications: All data, EDM, valuable papers, photographs and any other documents produced under the terms of the contract shall become the property of the Municipality. The contractor agrees to allow access to all data, EDM, valuable papers, photographs, and other documents to the Municipality, the State or United States Government at all times. The contractor shall not copyright any material originating under the contract without prior written approval of the Municipality.
- (d) Ownership of the Work: All studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM, photographs, and other material prepared or collected by the contractor, hereafter referred to as "instruments of professional service," shall become the property of the Municipality as they are prepared and/or developed during performance of the work of the contract. If a contractor uses a proprietary system or method to perform the work, only the product will become the property of the Municipality.

The contractor shall surrender to the Municipality upon demand or submit for inspection at any time, any instruments of professional service that have been collected, undertaken or completed by the contractor pursuant to the contract. Upon completion of the work, these instruments of professional service will be appropriately endorsed by the contractor and turned over to the Municipality.



Data and publication rights to any instruments of professional services produced under the contract are reserved to the Municipality and shall not be copyrighted by the contractor at any time without written approval of the Municipality. No publication or publicity of the work, in part or in total, shall be made without the consent of the Municipality, except that contractors may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.

- (e) Rights and Remedies Additional: The rights and remedies of the Municipality under this article are in addition to any other rights and remedies that the Municipality may possess by law or under this contract.
- (f) Decisions Final and Binding: Decisions of the Municipality on matters discussed in this article shall be final and binding.

**5.03 PERSONNEL REQUIREMENTS AND CONDITIONS.** The contractor shall employ only qualified personnel to supervise and perform the work. The Municipality shall have the right to approve or disapprove key personnel assigned to administer activities related to the contract.

The contractor shall supply resumes for staff proposed to work on assignment(s) under contracts for review, and acceptance, or rejection, by the Municipality. This requirement may be waived if the proposed staff has worked on similar projects for the Municipality in the past. The Municipality retains the right to interview the proposed staff.

Except with the approval of the Municipality, during the life of the contract, the contractor shall not employ:

- (a) Personnel on the payroll of the State or the Municipality who are directly involved with the awarding, administration, monitoring, or performance of the contract or any project that is the subject of the contract.
- (b) Any person so involved within one (1) year of termination of employment with the State or the Municipality.

The contractor warrants that no company or person has been employed or retained, other than a bonafide employee working solely for the contractor, to solicit or secure the contract, and that no company or person has been paid or has a contract with the contractor to be paid, other than a bonafide employee working solely for the contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the contract. For breach or violation of this warranty, the Municipality shall have the right to terminate the contract, without liability to the Municipality, and to retrieve all costs incurred by the Municipality in the performance of the contract.

The Municipality reserves the right to require removal of any person employed by a contractor from work related to the contract for misconduct, incompetence, or negligence, or who neglects or refuses to comply with the requirements of the contract. The decision of the Municipality, in

the due and proper performance of its duties, shall be final and not subject to challenge or appeal beyond those described in Section 5.12.

**5.04 NO EMPLOYEE BENEFITS FOR CONTRACTOR:** The Contractor understands that the Municipality will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to Municipal employees, nor will the Municipality withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of signing of the Agreement. The Contractor understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Contractor, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**5.05 ASSIGNMENTS, TRANSFERS AND SUBLETTING.** The contractor shall not assign, sublet, or transfer any interest in the work covered by the contract without prior written consent of the Municipality and appropriate federal agencies, if applicable. Further, if any subcontractor participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the Municipality. The approval or consent to assign, sublet or assign any portion of the work shall in no way relieve the contractor of responsibility for the performance of that portion of the work so affected. Except as otherwise provided in these specifications, the form of the subcontractor's contract shall be as developed by the contractor.

Any authorized subcontracts shall contain all of the same provisions specified for and attached to the original contract with the Municipality. The Municipality shall be provided copies of all signed subcontracts.

**5.06 PERFORMANCE AND COMPLETION OF WORK.** The contractor shall perform the services specified in accordance with the terms of the contract and shall complete the contracted services by the completion dates specified in the contract.

With the exception of ongoing obligations (*e.g.*, insurance, ownership of the work, and appearances) upon completion of all services covered under the contract and payment of the agreed upon fee, the contract with its mutual obligations shall be terminated.

If, at any time during or after performance of the contract, the contractor discovers any design errors, change(s) in standards, work product, or other issues that warrant change(s), the contractor shall notify the Local Project Manager immediately. This paragraph also applies to those projects that are under construction or have been constructed.

**5.07 CONTINUING OBLIGATIONS.** The contractor agrees that if, because of death(s) or other occurrences, it becomes impossible to effectively perform its services in compliance with the contract, neither the contractor nor its surviving principals shall be relieved of their obligations to complete the services under the contract. However, the Municipality may terminate the contract if it considers a death, incapacity, or other removal of any principal(s)

and/or key project personnel to be a loss of such magnitude that it would affect the contractor's ability to satisfactorily comply with the contract.

#### **5.08 APPEARANCES.**

(a) Hearings and Conferences: The contractor shall provide professional services required by the Municipality that are necessary for furtherance of any work covered under the contract. Professional services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its services provided under the contract.

The contractor shall perform any liaison that the Municipality deems necessary for the furtherance of the work and participate with the Municipality, at any reasonable time, in conferences, concerning interpretation and evaluation of all services provided under the contract.

The contractor further agrees to participate in meetings with the Municipality, the State and applicable Federal Agencies, and any other interested or affected participants for the purpose of review or resolution of any conflicts pertaining to the contract. The contractor shall be equitably paid for such services, and for any reasonable expenses incurred in relation thereto, in accordance with the contract.

(b) Appearance as Witness: If and when required by the Municipality, the contractor, or an appropriate representative, shall prepare for and appear in, on behalf of the Municipality, any litigation or other legal proceeding concerning any relevant project or related contract. The contractor shall be equitably paid for such services, and for any reasonable expenses incurred in relation thereto, in accordance with the contract.

**5.09 CHANGES AND AMENDMENTS.** Extra work, additional services or changes may necessitate the need to amend the contract. Extra work, additional services or changes must be properly documented and approved by the Local Project Manager, or an authorized official delegated this responsibility, prior to initiating action of any extra work, additional services, or changes.

**5.10 APPENDICES.** The Municipality may attach to these specifications appendices containing various forms and typical sample sheets for guidance and assistance to the contractor in the performance of the work. It is understood that such forms and samples may be modified, altered, and augmented from time to time by the Municipality. It is the responsibility of the contractor to ensure that it has the latest versions applicable to the contract.

**5.11 EXTENSION OF TIME.** The contractor agrees to perform the work in a diligent and timely manner; no charges or claims for damages shall be made by the contractor for delays or hindrances from any cause whatsoever. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the Municipality may decide. Time

extensions may be granted only by amendment, and only for excusable delays such as delays beyond the control of the contractor and without the fault or negligence of the contractor.

The contractor may, with justification, request in writing an extension of the allotted time for completion of the work. A request for extension will be evaluated, and if the Municipality determines that the justification is valid, an extension of time for completion of the work may be granted. A request for extension of time must be made before the contractor is in default.

The decision of the Municipality relative to granting an extension of time shall be final and binding.

**5.12 RESOLUTION OF CONTRACT DISPUTES.** The parties shall attempt to resolve any disputes that may arise under the contract by negotiation. Any dispute not resolved by negotiation shall be referred to the Local Project Manager for determination. If the contractor is aggrieved by the decision of the Local Project Manager, the contractor ~~may~~ must file an appeal following the process described below.

(a) This Section sets forth the exclusive appeal remedies available with respect to this contract. The Contractor, by signing the contract, expressly recognizes the limitation on its rights to appeal contained herein, expressly waives all other rights and remedies and agrees that the decision on any appeal, as provided herein, shall be final and conclusive. These provisions are included in this contract expressly in consideration for such waiver and agreement by the Contractor.

(b) A Contractor may appeal any determination regarding the contract by filing a notice of appeal by hand delivery or courier to the Municipal Legislative Body. The notice of appeal shall specifically state the grounds of the protest.

(c) Within seven (7) calendar days of the notice of appeal the Contractor must file with the Municipality a detailed statement of the grounds, legal authorities and facts, including all documents and evidentiary statements, in support of the appeal. Evidentiary statements, if any, shall be submitted under penalty of perjury. The Contractor shall have the burden of proving its appeal by clear and convincing evidence.

(d) Failure to file a notice of appeal or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to appeal the evaluation or qualified process and decisions thereunder.

(e) Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except the Municipal Legislative Body, in its sole discretion, may decide to permit a hearing or argument if it determines that such hearing or argument is necessary for the protection of the public interest. The Municipal Legislative Body shall issue a written decision regarding the appeal after it receives the detailed statement of appeal. Such decision shall be final and

conclusive.

(f) If the Municipal Legislative Body concludes that the Contractor's has established a basis for appeal, the Municipal Legislative Body will determine what remedial steps, if any, are necessary or appropriate to address the issues raised in the appeal. Such steps may include, without limitation, withdrawing or revising the decisions, or taking other appropriate actions.

**5.13 EXCUSABLE FAILURE TO COMPLY WITH TIME SCHEDULE.** Neither party hereto shall be held responsible for delay in performing the work encompassed herein when such delay is due to unforeseeable causes such as, but not limited to, acts of God or a public enemy, fire, strikes, floods, or legal acts of public authorities. In the event that any such causes for delay are of such magnitude as to prevent the complete performance of the contract within two (2) years of the originally scheduled completion date, either party may by written notice request an extension of time or terminate the contract.

**5.14 NO ADVANTAGE FROM ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS.** Neither the contractor nor the Municipality shall take advantage or be afforded any benefit as the result of apparent error(s) or omission(s) in the contract documents. If either party discovers error(s) or omission(s), it shall immediately notify the other.

**5.15 NO GIFTS OR GRATUITIES:** Contractor shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the Municipality or the State during the term of this Agreement.

**5.16 ADDITIONAL ADMINISTRATIVE REQUIREMENTS:**

- (a) Copeland "Anti-Kickback" Act. For any Federal-Aid Contracts or subcontracts for construction or repair, the Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. Part 874) as supplemented by Department of Labor Regulations (29 CFR Part 3).
- (b) Davis-Bacon Act. For any Federal-Aid construction contracts in excess of \$2,000, the Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. Section 276a to 267a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5).
- (c) Work Hours. For any Federal-Aid construction contracts in excess of \$ 2,000, or in excess of \$ 2,500 for other contracts involving employment of mechanics or laborers, the Contractor agrees to comply with the Sections 103 and 107 of the Contract Working Hours and Safety Standards Act (40 U.S.C. Section 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).
- (d) Exclusionary or Discriminatory Specifications. Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant of loan funds to support procurements utilizing exclusionary of discriminatory specifications.

## ***Section 6: OPERATIONAL STANDARDS***

**6.01 RESPONSIBILITY FOR SUPERVISION.** The contractor shall be responsible for supervision of contractor employees and subcontractors for all work performed under the contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the contract.

**6.02 WORK SCHEDULE AND PROGRESS REPORTS.** Prior to initiating any work, the contractor shall work with the Municipality's Local Project Manager to develop a work schedule showing how the contractor will complete the various phases of work to meet the completion date and any interim submission date(s) in the contract. The Municipality will use this work schedule to monitor the contractor.

The contractor during the life of the contract shall make monthly progress reports, or as determined by the Local Project Manager, indicating the work achieved through the date of the report. The contractor shall link the monthly progress reports to the schedule. The report shall indicate any matters that have, or are anticipated to, adversely affected progress of the work. The Municipality may require the contractor to prepare a revised work schedule in the event that a specific progress achievement falls behind the scheduled progress by more than thirty (30) days. The revised work schedule shall be due as of the date specified by the Municipality.

**6.03 UTILITIES.** Whenever a facility or component of a private, public, or cooperatively owned utility will be affected by proposed construction, the Contractor shall consult with the VTrans' Utility Section and initiate contacts and/or discussions with the affected owner(s) regarding requirements necessary for revision of facilities, both above and below ground. All revisions must be completely and accurately exhibited on detail sheets or plans. The contractor shall inform the Municipality, in writing, of all contacts with utility facility owners, and the results thereof.

**6.04 PUBLIC RELATIONS.** Whenever it is necessary to perform work in the field (*e.g.*, with respect to reconnaissance, testing, construction inspection and surveying) the contractor shall endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the contractor shall conduct themselves with propriety. If there is need to enter upon private property to accomplish the work under the contract, the contractor shall inform property owners and/or tenants in a timely manner and in accordance with relevant statutes. All work will be done with minimum damage to the land and disturbance to the owner thereof. Upon request of the contractor, the Municipality shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the contractor is acting on behalf of the Municipality.

**6.05 INSPECTION OF WORK.** The Municipality, the State and applicable federal agencies shall, at all times, have access to the contractor's work for the purposes of inspection, accounting and auditing, and the contractor shall provide appropriate and necessary access to accomplish inspections, accounting, and auditing. The contractor shall permit the Municipality, the State, or representative(s) of the State and applicable federal agencies the opportunity at any time to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken

by the contractor pursuant to the contract.

A conference, visit to a site, or inspection of the work may be held at the request of the contractor, the Municipality, the State, and appropriate federal agency(ies).

**6.06 WRITTEN DELIVERABLES/REPORTS.** Unless otherwise identified in the scope of work, written deliverables presented under terms of the contract shall be on 8.5" by 11" paper, consecutively printed on both sides. Reports shall be bound and have a title page that identifies the name and number of the project, if applicable, and publication date. The report shall have a table of contents and each page shall be numbered consecutively. Draft reports shall be clearly identified as such.

## ***Section 7: PROJECT DEVELOPMENT AND STANDARDS***

**7.01 PLANS, RECORDS AND AVAILABLE DATA.** At the request of the contractor, the Municipality will make available to the contractor, at no charge, all information and data related to the contract.

**7.02 DESIGN SPECIFICATIONS, STANDARDS, MANUALS, GUIDELINES, DIRECTIVES AND POLICIES.** The contractor shall comply with all applicable statutes, regulations, ordinances, specifications, manuals, standards, guidelines, policies, directives and any other requirements related to the contract.

In case of any conflict with the items referenced above, the contractor is responsible to ascertain and follow the direction provided by the Municipality.

**7.03 ELECTRONIC DATA MEDIA.** Contractors, subcontractors, and representative(s) thereof performing work related to the contract shall ensure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage. For those projects that are to be stored on the VTrans plan archival system the following shall apply:

(a) CADD Requirements.

CADD requirements are available in "The Vermont Agency of Transportation CADD Standards and Procedure Manual" on the VTrans web page at <http://www.vtrans.vermont.gov>. VTrans has developed this manual to ensure that all electronic CADD files delivered to and taken from the Agency are in formats that can be utilized for engineering purposes without modification. VTrans will not accept or pay for any CADD files which do not adhere to the requirements specified in the CADD manual.

(b) VTrans Web Page and File Transfer Protocol (FTP) Sites - Disclaimer.

The files located on the VTrans web page and FTP sites are subject to change.



The contractor is responsible for maintaining contact with VTrans to determine if any changes affect the work being produced by the contractor. Although VTrans makes every effort to ensure the accuracy of its work, it cannot guarantee that transferred files are error free. VTrans is not responsible in any way for costs or other consequences, whether direct or indirect, that may occur to the contractor or any subsequent users of the information due to errors that may or may not be detected.

(c) Geographic Information System Requirements.

The contractor shall provide to the Municipality all spatially-referenced digital data developed for or used in a project. Such data shall conform to relevant standards and guidelines of the Vermont Geographic Information System with respect to digital media, data format, documentation, and in all other respects. Copies of the standards and guidelines can be obtained from the Vermont Center for Geographic Information, Inc., 58 South Main Street, Suite 2, Waterbury, VT 05676; (802) 882-3000 or at [www.VCGI.vermont.gov](http://www.VCGI.vermont.gov).

(d) Data Specifications.

(1) Data structures (databases, data files, and other electronic information) shall provide 4-digit date century recognition. Example: 2016 provides “date century recognition,” while ‘16 does not.

(2) All stored data shall contain date century recognition, including, but not limited to, data stored in databases and hardware/device internal system dates.

(3) Calculations and program logic shall accommodate both same century and multi-century formulas and data values. Calculations and program logic includes, but are not limited to, sort algorithms, calendar generations, event recognition, and all processing actions that use or produce data values.

(4) Interfaces to and from other systems or organizations shall prevent noncompliant dates and data from entering or exiting any State system.

(5) User interfaces (*i.e.*, screens, reports, and similar items) shall accurately show 4-digit years.

(e) General Specifications.

To provide uniform and consistent integration with electronic data transfer, all

data, other than specific applications previously mentioned, shall be in Microsoft's Office format. The desktop suite includes word processing, spread sheets and presentations. All transmissions of e-mail must be in Rich Text (RTF) or Hyper Text Markup Language (HTML) format.

**7.04 REVIEWS AND APPROVALS.** All work prepared by the contractor, subcontractor(s), and representatives thereof pursuant to the contract shall be subject to review and approval by the Municipality. Approval for any work shall be documented in writing.

Approvals shall not relieve a contractor of its professional obligation to correct any defects or errors in the work at the contractor's expense.

The pertinent federal entity may independently review and comment on the contract deliverables. The contractor, through the Municipality, shall respond to all official comments regardless of their source. The contractor shall supply the Municipality with written copies of all correspondence relating to reviews. All comments must be satisfactorily resolved before the affected work is advanced.

## ***Section 8: PAYMENT FOR SERVICES RENDERED***

**8.01 PAYMENT PROCEDURES.** The Municipality will pay the contractor, or the contractor's legal representative, progress payments monthly or as otherwise specified in the contract.

- (a) General: Payment generally will be determined by the percentage of work completed as documented by a progress report of such work. The total percentage of work billed shall be within ten (10) percent of the total percentage of work completed. The percentage of work completed is based on the actual contract work produced, as outlined in the monthly progress report.
- (b) Hourly-Type Contracts: For hourly type contracts, payments will be made based on documented hours worked and direct expenses encumbered, as allowed by the contract.
- (c) Actual Costs and Fixed Fees: When applicable for the type of payment specified in the contract, the progress report shall summarize actual costs and any earned portion of a fixed fee.
- (d) Maximum Limiting Amount Cannot Be Exceeded: The total amount invoiced for the contract and the total amount paid pursuant to the contract cannot exceed the contract's Maximum Limiting Amount.
- (e) Invoices: Invoices shall be submitted to the Municipality's Local Project Manager. The invoice must adhere to all terms of the contract. The "final invoice" shall be so labeled. All invoices must:
  - 1) Be originals signed by a company official and be accompanied by two

copies, with documentation for the original and all copies.

- 2) Indicate the appropriate project name, project number if applicable, and contract number. When applicable, invoices shall further be broken down in detail between projects.
  - 3) Be dated and list the period of performance for which payment is requested.
  - 4) Include a breakdown of direct labor hours by classification of labor, phases and tasks, if applicable. For reporting purposes, however, the amounts can be combined for phases that are paid from the same funding source.
  - 5) Not include overtime rates unless the Municipality's Local Project Manager provides prior written approval, if applicable. Information regarding overtime can be found in 48 CFR Ch. 1, Section 22.103.
  - 6) Be accompanied by documentation to substantiate necessary charges. Documentation of all charges must accompany the original invoice and each copy.
- (f) Meals and Travel Expenses: When applicable for the type of payment specified in the contract, reimbursement of expenses for meals and travel shall be limited to the current, approved in-state rates as determined by the State's non-management bargaining unit labor contract, and need not be receipted. Current in-state expense reimbursement rates may be obtained from the Vermont Department of Human Resources.
- (g) Other Expenses: Expenses for the following items will be reimbursed at reasonable rates as determined by the Municipality. In all instances, receipts or bills indicating costs pertaining to the project identified, inclusive of any discounts given to the contractor, must be submitted.
1. Lodging.
  2. Telephone and fax.
  3. Printing and reproduction.  
For printing and reproduction work performed within the contractor's firm, log sheets are sufficient if they clearly indicate the contract or project copies.
  4. Postage and shipping.  
Contractor shall choose the most economical type of service (regular mail, overnight express, other) workable for the situation. The use of express mail or overnight delivery should be limited to those instances when such expenditures are warranted.

Reimbursement of all other expenses is subject to approval by the Municipality and all other reimbursement requests must include receipts or other documentation to substantiate the expenses. Except as otherwise provided in the contract, all requests for reimbursement of direct expenses must reflect actual costs inclusive of any discounts given to the contractor.

The contractor must attach any sub-contractor invoices, ensure that they adhere to the terms of the contract, and include all necessary receipts and other documentation. **Mark-up on subcontractor invoices is not allowed.**

- (h) Payment Is Not Acceptance: Approval given or payment made under the contract shall not be conclusive evidence of the performance of said contract, either wholly or in part. Payment shall not be construed to be acceptance of defective work or improper materials.
- (i) Payment for Adjusted Work: As adjustments are required for additions, deletions, or changes to the contract, payment for such work shall be in accordance with Subsection 8.02 - Payment for Additions, Deletions or Changes and/or any applicable fees set forth in amendment(s) to the contract.
- (j) If the contractor discovers error in a submitted invoice or payment, the contractor shall notify the Local Project Manager of the error prior to the submission of any additional invoices. The local project manager will provide direction on how the error is to be resolved.

**8.02 PAYMENT FOR ADDITIONS, DELETIONS OR CHANGES:** The Municipality may, upon written notice, require changes, additions or deletions to the work/contract. Whenever possible, any such adjustments shall be administered under the appropriate fee established in the contract based on the adjusted quantity of work.

The Municipality may, upon written notice, and without invalidating the contract, require changes resulting from revision or abandonment of work already satisfactorily performed by the contractor or changes in the scope of work.

If the value of such changes, additions or deletions is not otherwise reflected in payments to the contractor pursuant to the contract, or if such changes require additional time and/or expense to perform the work, the contract may be amended accordingly.

The contractor agrees to maintain complete and accurate records, in a form satisfactory to the Municipality, for any extra work or additional services in accordance with Subsection 6.05 - Inspection of Work. When extra work or additional services are ordered, the contractor shall perform such work or services only after an amendment has been fully executed or a written notice to proceed is issued by the Municipality.

**8.03 RELIANCE BY THE MUNICIPALITY ON REPRESENTATIONS:** All payments by the Municipality under this Agreement will be made in reliance upon the accuracy of all prior

representations by the Contractor, including but not limited to bills, invoices, progress reports and other proofs of work.

## ***Section 9: AUDIT REQUIREMENTS***

**9.01 – AUDIT REQUIREMENTS.** All Contractors and subcontractors shall have on file with the VTrans Audit Section a current AF 38 Form and related documentation appropriate for the type and size of contract with the Municipality under this agreement. (See below for a link to the AF 38 Form on the VTrans website).

**9.02 – INDIRECT COST CERTIFICATION.** All contractors entering into a contract to provide engineering and/or design related services, regardless of amount, must have a current INDIRECT COST CERTIFICATION form on file with the VTrans Audit Section. The form is available on the VTrans Contract Administration website, <http://vtranscontracts.vermont.gov>.

**9.03 RECORD AVAILABLE FOR AUDIT.** The Contractor will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the Municipality, the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The Municipality, the State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

## ***Section 10. SECRETARY OF STATE***

**10.01 REGISTRATION WITH SECRETARY OF STATE.** The contractor shall be registered with the Vermont Secretary of State to do business in the State of Vermont if the contractor:

- (a) Is a domestic or foreign corporation.
- (b) Is a resident co-partner or resident member of a co-partnership or association.
- (c) Is (are) a non-resident individual(s) doing business in Vermont in his/her (their) individual capacity(ies).
- (d) Is doing business in Vermont under any name other than the Contractor's own personal name.

This registration must be complete prior to contract preparation. Current registration must be maintained during the entire contract term.

## *Special Conditions*

The SPECIFICATIONS FOR CONTRACTOR SERVICES, as modified herein, shall apply to this Contract.

### **1.02 DEFINITIONS:**

**CONTRACTOR:** Shall refer to Consultants when the Contract is between a Municipality and a professional consultant, or other professional services as provided.

**MUNICIPALITY:** As referenced shall be the City of Burlington, or City.

**2.01 INDEPENDENCE, LIABILITY.** The first sentence of the first paragraph should be modified as follows:

The Contractor agrees, to the fullest extent permitted by the law, that it shall indemnify and hold harmless the Municipality, its officers, agents and employees from liability, and defend, for damages to third parties, together with costs, including attorney's fees, incurred in defending such claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of the Contractor, its agents or employees, committed, in the performance of professional services to be provided under this Agreement.

### **3.02 WORKERS' COMPENSATION.** Add:

Minimum limits for Employer's Liability:

- (a) Bodily Injury by Accident: \$500,000 each accident
- (b) Bodily Injury by Disease: \$500,000 policy limit, \$100,000 each employee

**3.03 GENERAL LIABILITY AND PROPERTY DAMAGE.** Replace this section in its entirety with the following:

With respect to all operations performed by the Consultant, subconsultants, agents or workers, it is the Consultant's responsibility to insure that general liability insurance coverage provides all major divisions of coverage including, but not limited to:

1. Premises Operations
2. Independent Contractors' Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Contractual Liability
6. Broad Form Property Damage
7. Medical Expenses
8. Collapse, Underground and Explosion Hazards

The policy shall be on an occurrence form with limits not less than:  
\$1,000,000 Per Occurrence

## *Special Conditions*

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal & Advertising Injury
\$ 250,000	Fire Damage
\$ 50,000	Legal/Liability
\$ 5,000	Medical

The Contractor shall name the Municipality and State of Vermont, and their officers and employees, as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.

**3.07 PROFESSIONAL LIABILITY INSURANCE.** Section (a) shall be replaced in its entirety with the following:

- (d) **General.** When performing “engineering and design” related services, or upon the request of the State or Municipality, the contractor shall carry architects/engineers professional liability insurance covering errors and omissions made during performance of contractual duties with the following minimum limits:

\$3,000,000 – Annual Aggregate

\$2,000,000 – Per Occurrence

### **4.02 GENERAL COMPLIANCE WITH LAWS; RESPONSIBILITY FOR VIOLATION.**

This section shall be modified as follows by Add at the end of the last sentence:

Including but not limited to the Prequalification of Contractors and Burlington Livable Wage Ordinance as applicable based on the contract value limits set in the Ordinance. The Women's Economic Opportunity Program, Non-Outsourcing Ordinance, and the Union-Deterrence Ordinance shall be applicable to all Contracts with the Municipality except where Federal Highway Association preclude the use of these contracts or the work type is “engineering and design related”. The Contractor shall provide the required certifications attesting to compliance with these ordinances.

1. **City of Burlington Ordinances.** (available online at <http://www.codepublishing.com/vt/burlington/> )

- (1) Prequalification of Construction Contractors. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE V - PREQUALIFICATION OF CONSTRUCTION CONTRACTORS, Sec. 21-67 through Sec. 21-78. For all projects where total project cost is one hundred thousand dollars (\$100,000.00) or more.
- (2) City Livable Wages Ordinance. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE VI - LIVABLE WAGES, Sec. 21-80 through Sec. 21-87. For any contractor that has a service contract(s) with the City of Burlington



## *Special Conditions*

where the total amount of the service contract or service contracts exceeds fifteen thousand dollars (\$15,000.00) for any twelve (12) month period, including any subcontractors of such contractor or vendor.

- (3) Women's Economic Opportunity Program. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE II – WOMEN IN CONSTRUCTION TRADES, Sections 21-50 through 21-55. For the projects where the total cost is fifty thousand dollars (\$50,000.00) or more.
- (4) City Outsourcing Ordinance. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE VII - OUTSOURCING, Sec. 21-90 through Sec. 21-94. For any contract for services which involves any city funds and the total amount of the contract is fifty thousand dollars (\$50,000.00) or more
- (5) City Union Deterrence Ordinance. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE VIII – UNION DETERRENCE, Sec. 21-100 through Sec. 21-103. For Any contract for services which involves any City funds and the total amount of the contract is fifteen thousand dollars (\$15,000.00) or more

### **4.10 CIVIL RIGHTS, EQUAL EMPLOYMENT OPPORTUNITY AND AMERICANS WITH DISABILITIES ACT.** Replace the first paragraph with the following:

During performance of the contract, the contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, ancestry, sex, creed, sexual orientation, national origin, physical or mental condition, disability, veteran status, or place of birth.

### **7.03 ELECTRONIC DATA MEDIA.** Modify (a) with the following:

For Municipal only projects the MPM shall determine the CADD software preference and version.

END SPECIAL CONDITIONS

# Special Conditions

## BURLINGTON ORDINANCE REQUIREMENTS

### CITY OF BURLINGTON

10.

#### ORDINANCE

Sponsor: Councilors Mason,

Bushor, Paul: Ordinance Com.

Public Hearing Dates \_\_\_\_\_

First reading: 09/23/13

Referred to: Ordinance Committee

Rules suspended and placed in all stages of passage: \_\_\_\_\_

Second reading: 10/21/13

Action: adopted

Date: 10/21/13

Signed by Mayor: 10/30/13

Published: 11/06/13

Effective: 11/27/13

revised version

In the Year Two Thousand Thirteen

#### An Ordinance in Relation to

OFFENSES AND MISCELLANEOUS PROVISIONS--  
ARTICLE VI - Livable Wages

**It is hereby Ordained** by the City Council of the City of Burlington, as follows:

That Chapter 21, Offenses and Miscellaneous Provisions, of the Code of Ordinances of the City of Burlington be and hereby is amended by amending Sections 21-80 through 21-87 thereof and adding new Sections 21-88 and 21-89 thereto to read as follows:

#### **Sec. 21-80. - Findings and purpose.**

In enacting this article, the city council states the following findings and purposes:

- (a) Income from full-time work should be sufficient to meet an individual's basic needs;
- (b) The City of Burlington is committed to ensuring that its year-round employees (~~full and part time~~) have an opportunity for a decent quality of life and are compensated, and such that they are not dependent on public assistance, to meet their basic needs;
- (c) The ~~city~~ City of Burlington is committed, through its contracts with vendors and provision of financial assistance, to encourage the private sector to pay its employees a livable wage and contribute to employee health care benefits;
- (d) The creation of jobs that pay livable wages promotes the prosperity and general welfare of the ~~city~~ City of Burlington and its residents, increases consumer spending with local businesses, improves the economic welfare and security of affected employees and reduces expenditures for public assistance;
- (e) It is the intention of the city council in passing this article to provide a minimum level of compensation for ~~city~~ employees of the City of Burlington and employees of entities that enter into service contracts or receive financial assistance from the City of Burlington.

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## OFFENSES AND MISCELLANEOUS PROVISIONS-- ARTICLE VI - Livable Wages

### **Sec. 21-81. - Definitions.**

As used in this article, the following terms shall be defined as follows:

a) Contractor or vendor is a person or entity that has a service contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods) ~~where Burlington where~~ the total amount of the service contract or service contracts exceeds fifteen thousand dollars (\$15,000.00) for any twelve-month period, including any subcontractors of such contractor or vendor. ~~A person or entity that has a contract with the City of Burlington for the use of property under the jurisdiction of the board of airport commissioners, or any person or entity that has a sublease or other agreement to perform services on such property, shall also be considered a contractor under this article.~~

(b) Grantee is a person or entity that is the recipient of financial assistance from the City of Burlington in the form of grants ~~administered by the city~~, including any contractors or ~~subcontractor~~ grantees of the grantee, that exceeds fifteen thousand dollars (\$15,000.00) for any twelve-month period.

(c) Covered employer means the City of Burlington ~~(except that the Burlington School Department shall not be considered a covered employer)~~, a contractor or vendor or a grantee as defined above. The primary contractor, vendor, or grantee shall be responsible for the compliance of each of its subcontractors (or of each subgrantee) that is a covered employer.

(d) Covered employee means an "employee" as defined below, who is employed by a "covered employer," subject to the following:

(1) An employee who is employed by a contractor or vendor is a "covered employee" during the period of time he or she expends on furnishing services under a service contract with the City of Burlington ~~funded by the city~~, notwithstanding that the employee may be a temporary or seasonal employee;

(2) An employee who is employed by a grantee who expends at least half of his or her time on activities funded by the ~~city~~ City of Burlington is a "covered employee."

(e) Designated accountability monitor shall mean a nonprofit corporation which has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and that is independent of the parties it is monitoring.

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### OFFENSES AND MISCELLANEOUS PROVISIONS-- ARTICLE VI - Livable Wages

(ef) Employee means a person who is employed on a full-time or part-time regular basis ~~(i.e., nenseasonal)~~. In addition, commencing with the next fiscal year, a seasonal or temporary employee of the City of Burlington who works ten (10) or more hours per week and has been employed by the City of Burlington for a period of four years shall be considered a covered employee commencing in the fifth year of employment. "Employee" shall not refer to volunteers working without pay or for a nominal stipend, persons working in an approved apprenticeship program, persons who are hired for a prescribed period of six months or less to fulfill the requirements to obtain a professional license as an attorney, persons who are hired through youth employment programs or student workers or interns participating in established educational internship programs.

(fg) Employer-assisted health care means health care benefits provided by employers for employees (or employees and their dependents) at the employer's cost or at an employer contribution towards the purchase of such health care benefits, provided that the employer cost or contribution consists of at least one dollar and twenty cents (\$1.20) per hour. (Said amount shall be adjusted every two (2) years for inflation, by the chief administrative officer of the city.)

(gh) Livable wage has the meaning set forth in section 21-82.

(i) Retaliation shall mean the denial of any right guaranteed under this article, and any threat, discipline, discharge, demotion, suspension, reduction of hours, or any other adverse action against an employee for exercising any right guaranteed under this article. Retaliation shall also include coercion, intimidation, threat, harassment, or interference in any manner with any investigation, proceeding, or hearing under this article.

(j) Service contract means a contract primarily for the furnishing of services to the City of Burlington (as opposed to the purchasing or leasing of goods or property) A contract involving the furnishing of financial products, insurance products, and-or software, even if that contract also includes some support or other services related to the provision of the products, shall not be considered a service contract.

#### **Sec. 21-82. - Livable wages required.**

(a) Every covered employer shall pay each and every covered employee at least a livable wage ("Livable Wage") as established under this article no less than:

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### OFFENSES AND MISCELLANEOUS PROVISIONS-- ARTICLE VI - Livable Wages

(1) For a covered employer that provides employer assisted health care, the livable wage shall be at least ~~nine dollars and ninety cents~~ thirteen dollars and ninety four cents (~~\$13.949-90~~) per hour on the effective date of the ~~amendments is to this article~~ [Dec. 19, 2001].

(2) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least ~~eleven dollars and sixty eight cents~~ fifteen dollars and eighty three cents (~~\$15.834-68~~) per hour on the effective date of the amendments to this article [Dec. 19, 2001].

(3) ~~Tipped covered employees and other ee~~ Covered employees whose wage compensation consists of more or other than hourly wages, including, but not limited to, tips, commissions, flat fees or bonuses, shall be paid so that the total of all wage an hourly wage ~~which, when combined with the other compensation,~~ will at least equal the Livable wWage as established under this article.

(b) The amount of the Livable wWage established in this section shall be adjusted by the chief administrative officer of the city, as of July ~~1st~~ first of each year based upon a report of the Joint Fiscal Office of the State of Vermont that describes the basic needs budget for a single person but utilizes a model of two (2) adults residing in a two-bedroom living unit in an urban area with the moderate cost food plan. Should there be no such report from the joint fiscal office, the chief administrative officer shall obtain and utilize a basic needs budget that applies a similar methodology. The livable wage rates derived from utilizing a model of two (2) adults residing in a two-bedroom living unit in an urban area with a moderate cost food plan shall not become effective until rates meet or exceed the 2010 posted livable wage rates. Prior to the first day of May preceding any such adjustment and prior to the first day of May of each calendar year thereafter, the chief administrative officer will provide public notice of this adjustment by ~~publishing a notice in a newspaper of general circulation, by posting a written notice in a prominent place in City Hall, by sending written notice to the city council and, in the case of covered employers that have requested individual notice and provided contact information an address of record to the chief administrative officer, by notice written letter to each such covered employer.~~ However, once a Livable Wage is applied to an individual employee, no reduction in that employee's pay rate is permissible due to this annual adjustment.

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### OFFENSES AND MISCELLANEOUS PROVISIONS-- ARTICLE VI - Livable Wages

(c) Covered employers shall provide at least twelve (12) compensated days off per year for full-time covered employees, and a proportionate amount for part-time covered employees, for sick leave, vacation, ~~or~~ personal, or combined time off leave.

#### **Sec. 21-83. - Applicability.**

(a) This article shall apply to any service contract or grant, as provided by this article that is awarded or entered into after the effective date of the article [~~Dec. 19, 2001~~]. After the effective date of the article, entering into any agreement or an extension, renewal or amendment of any contract or grant as defined herein shall be subject to compliance with this article.

(b) The requirements of this article shall apply during the term of any service contract subject to the article. Covered employers who receive grants shall comply with this article during the period of time the ~~city's~~ funds awarded by the City of Burlington are being expended by the covered employer.

#### **Sec. 21-84. - Enforcement.**

(a) ~~The City of Burlington shall require, as a condition of any~~ Each service contract or grant covered by this article section, shall contain provisions requiring that the affected-covered employer or grantee submit a written certification, under oath, during each year during the term of the service contract or grant, that the covered employer or grantee (including all of its subcontractors and subgrantees, if any) is in compliance with this article. The failure of a contract to contain such provisions does not excuse a covered employer from its obligations under this ordinance. confirming payment of a livable wage as a condition of entering into said contract or grant. The affected-covered employer shall agree to post a notice regarding the applicability of this section in any workplace or other location where employees or other persons contracted for employment are working. The ~~affected-covered~~ employer shall agree to provide payroll records or other documentation for itself and any subcontractors or subgrantees, as deemed necessary by the chief administrative officer of the City of Burlington within ten (10) business days from receipt of the City of Burlington's request.

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### OFFENSES AND MISCELLANEOUS PROVISIONS-- ARTICLE VI - Livable Wages

(b) The chief administrative officer of the City of Burlington may require that a covered employer submit proof of compliance with this article at any time, including but not limited to

(1) verification of an individual employee's compensation,

(2) production of payroll, health insurance enrollment records, or other relevant documentation, or

(3) evidence of proper posting of notice.

If a covered employer is not able to provide that information within ten (10) business days of the request, the chief administrative officer may turn the matter over to the city attorney's office for further enforcement proceedings.

(c) The City of Burlington shall appoint a designated accountability monitor that shall have the authority:

(i) To inform and educate employees of all applicable provisions of this article and other applicable laws, codes, and regulations;

(ii) To create a telephonic and electronic accountability system under this article that shall be available at all times to receive complaints under this article;

(iii) To establish and implement a system for processing employees' complaints under this article, including a system for investigating complaints and determining their legitimacy; and

(iv) To refer credible complaints to the City Attorney's office for potential enforcement action under this article.

The designated accountability monitor shall forward to the City of Burlington all credible complaints of violations within ten (10) days of their receipt.

(ed) Any covered employee who believes his or her covered employer is not complying with this article may file a complaint in writing with the City Attorney's office within one (1) year after the alleged violation. The City Attorney's office shall conduct an investigation of the complaint, during which it may require from the covered employer evidence such as may be required to determine whether the covered employer has been compliant, and shall make a finding of compliance or noncompliance within a reasonable time after receiving the complaint. Prior to ordering any penalty provided in subsections (e), (f), or (g) below, the City Attorney's office shall give notice to the covered employer. The covered employer may request a hearing within thirty (30) days of receipt of such notice. The hearing shall be conducted by a hearing

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### OFFENSES AND MISCELLANEOUS PROVISIONS-- ARTICLE VI - Livable Wages

officer appointed by the City Attorney's office, who shall affirm or reverse the finding or the penalty based upon evidence presented by the City Attorney's office and the covered employer.

(eeb) The City of Burlington shall have the right to modify, terminate and/or seek specific performance of any contract or grant with an affected covered employer from any court of competent jurisdiction, if the affected-covered employer has not complied with this article.

(fee) Any covered employer who violates this article may be barred from receiving a contract or grant from the city for a period up to two (2) years from the date of the finding of violation.

(edg) A violation of this article shall be a civil offense subject to a civil penalty of from two hundred dollars (\$200.00) to five hundred dollars (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any covered employee is not compensated as required by this article shall constitute a separate violation.

(h) If a complaint is received that implicates any City of Burlington employee in a possible violation of this ordinance, that complaint will be handled through the City's personnel procedures, not through the process outlined in this ordinance.

(fi-) Any covered employee aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against the covered employer within two (2) years after discovery of the alleged violation. The court may award any covered employee who files suit pursuant to this section, as to the relevant period of time, the following:

- (i) The difference between the livable wage required under this article and the amount actually paid to the covered employee;
- (ii) Equitable payment for any compensated days off that were unlawfully denied or were not properly compensated;
- (iii) Liquidated damages in an amount equal to the amount of back wages and/or compensated days off unlawfully withheld or of \$50 for each employee or person whose rights under this article were violated for each day that the violation occurred or continued, whichever is greater;
- (iv) Reinstatement in employment and/or injunctive relief; and
- (v) Reasonable attorneys' fees and costs.

(gi) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article. No person



## *Special Conditions*

shall engage in retaliation against an employee or threaten to do so because such employee has exercised rights or is planning to exercise rights protected under this article or has cooperated in any investigation conducted pursuant to this article.

### **Sec. 21-85. - Other provisions.**

(a) No affected-covered employer shall reduce the compensation, wages, fringe benefits or leave available to any covered employee in order to pay the livable wage required by this article. Any action in violation of this paragraph shall be deemed a violation of this article subject to the remedies of section 21-84.

(b) No covered employer with a current contract, as of the effective date of this provision, with the City of Burlington for the use of property located at the Burlington International Airport may reduce, during the term of that contract, the wages of a covered employee below the Livable Wage as a result of amendments to this ordinance.

(bc) Where pursuant to a contract for services with the city, the contractor or subcontractor incurs a contractual obligation to pay its employees certain wage rates, in no case except as stated in subsection 21-85(ed), shall the wage rates paid pursuant to that contract be less than the minimum livable wage paid pursuant to this article.

(ed) Notwithstanding subsection 21-85(bc), where employees are represented by a bargaining unit or labor union pursuant to rights conferred by state or federal law and a collective bargaining labor agreement is in effect governing the terms and conditions of employment of those employees, this chapter shall not apply to those employees, and the collective bargaining labor agreement shall control.

(ée) Covered employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the Earned Income Tax Credit under federal and state law.

(ef) The chief administrative officer of the city shall have the authority to promulgate rules as necessary to administer the provisions of this article, which shall become effective upon approval by the city council.

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## OFFENSES AND MISCELLANEOUS PROVISIONS-- ARTICLE VI - Livable Wages

### **Sec. 21-86. - Exemptions.**

An partial or complete exemption from the any requirement of this article may be requested for a period not to exceed two (2) years:

- (a) By a covered employer where payment of the livable wage authorized based upon a determination that compliance with the livable wage requirement would cause substantial economic hardship; and
- (b) By the City of Burlington - where application of this article to a particular contract or grant is found to violate specific state or federal statutory, regulatory or constitutional provision or provisions or where granting the exemption would be in the best interests of the City.

A covered employer or grantee granted an exemption under this Section 21-86 may reapply for an exemption upon the expiration of the exemption.

Requests for exemption may be granted by majority vote of the City Council. All requests for exemption shall be submitted to the chief administrative officer. The finance committee board of the city City of Burlington shall first consider such request and make a recommendation to the City Council. The decision of the City Council shall be final, shall consider the request for exemption with prior notice provided to the city council. A unanimous decision by the finance board shall be final. A split decision by the finance board is reviewable by the city council not later than the next meeting of the city council which occurs after the date of the finance board decision.

### **Sec. 21-87. - Severability.**

If any part or parts or application of any part of this article is held invalid, such holding shall not affect the validity of the remaining parts of this article.

### **Section 21-88. Annual Reporting.**

On or before April 15<sup>th</sup> of each year, the City Attorney's office shall submit a report to the City Council that provides the following information:

# *Special Conditions*

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OFFENSES AND MISCELLANEOUS PROVISIONS--  
ARTICLE VI - Livable Wages

An Ordinance in Relation to

(a) ~~all~~ list of all covered employers broken down by department;

(b) a list of all covered employers whose service contract did not contain the language required by this article; and

(c) all complaints filed and investigated by the City Attorney's office and the results of such investigation.

**Sec. 21-89. Effective Date.**

The amendments to this ordinance shall take effect on January 1, 2014, and shall not be retroactively applied.

\* Material stricken out deleted.

\*\* Material underlined added.

lb/EBlackwood/c: Ordinances 2013/Offenses & Misc..Provisions, Article VI – Livable Wages, Sections 21-80 - 21-89  
9/18/13; 10/16/13; 10/21/13

# ***Special Conditions***

## Attachment B

### Certification of Compliance with the City of Burlington's Livable Wage Ordinance

I, \_\_\_\_\_, on behalf of \_\_\_\_\_  
(Contractor/Consultant) and in connection with the \_\_\_\_\_ (project),  
hereby certify under oath that (1) Contractor shall comply with the City of Burlington's  
Livable Wage Ordinance; (2) as a condition of entering into this contract or grant,  
Contractor confirms that all covered employees, as defined by Burlington's Livable Wage  
Ordinance, shall be paid a livable wage for the term of the contract as determined and  
adjusted annually by the City of Burlington's Chief Administrative Officer, (3) a notice  
regarding the applicability of the Livable Wage Ordinance shall be posted in the workplace  
or other location where covered employees work, and (4) payroll records or other  
documentation, as deemed necessary by the Chief Administrative Officer, shall be provided  
within ten (10) business days from receipt of the City's request.

Dated at \_\_\_\_\_, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2015.

By: \_\_\_\_\_  
Duly Authorized Agent

Subscribed and sworn to before me: \_\_\_\_\_  
Notary

# *Special Conditions*

## BURLINGTON'S OUTSOURCING ORDINANCE

### ARTICLE VII. OUTSOURCING

#### **21-90 Policy.**

It is the policy of the City of Burlington to let service contracts to contractors, subcontractors and vendors who perform work in the United States.

(Ord. of 11-21-05/12-21-05)

#### **21-91 Definitions.**

(a) *Contractor or vendor.* A person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods), including any subcontractors of such contractor or vendor.

(b) *Government funded project.* Any contract for services which involves any city funds and the total amount of the contract is fifty thousand dollars (\$50,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.

(c) *Outsourcing.* The assigning or reassigning, directly, or indirectly through subcontracting, of services under a government funded project to workers performing the work outside of the United States.

(Ord. of 11-21-05/12-21-05)

#### **21-92 Implementation.**

(a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who is outsourcing, or causing the work to be performed outside of the United States or Canada.

(b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that the services provided under the contract will be performed in the United States or Canada.

(Ord. of 11-21-05/12-21-05)

#### **21-93 Exemption.**

An exemption from requirements of this article may be authorized by the chief administrative officer based upon a determination that the services to be performed for the government funded project are not available in the United States or Canada at a reasonable cost. Any such exemption decision by the chief administrative officer shall be reported to the board of finance in writing within five (5) days. The board of

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finance may, if it should vote to do so, override the exemption decision if such vote occurs within fourteen (14) days of the date of the chief administrative officer's communication to such board.

(Ord. of 11-21-05/12-21-05)

### **21-94 Enforcement.**

- (a) Any contractor, subcontractor or vendor who files false or materially misleading information in connection with an application, certification or request for information pursuant to the provisions of this article or outsources work on a government funded project shall be deemed to be in violation of this article.
- (b) A violation of this article shall be a civil offense subject to a civil penalty of from one hundred dollars (\$100.00) to five hundred (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any violation of any provision of this article shall continue shall constitute a separate violation.
- (c) The City of Burlington shall have the right to modify, terminate and or seek specific performance of any contract for a government funded project if the contractor, subcontractor or vendor has not complied with this article.

(Ord. of 11-21-05/12-21-05)

### **21-95—21-99 Reserved.**

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## Attachment C

### Certification of Compliance with the City of Burlington's Outsourcing Ordinance

I, \_\_\_\_\_, on behalf of \_\_\_\_\_  
(Contractor) and in connection with the  
\_\_\_\_\_ [project].

hereby certify under oath that (1) Contractor shall comply with the City of Burlington's Outsourcing Ordinance (Ordinance §§ 21-90 – 21-93); (2) as a condition of entering into this contract or grant, Contractor confirms that the services provided under the above-referenced contract will be performed in the United States or Canada.

Dated at \_\_\_\_\_, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2015.

By: \_\_\_\_\_  
Duly Authorized Agent

Subscribed and sworn to before me: \_\_\_\_\_  
Notary

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## BURLINGTON'S UNION DETERRENCE ORDINANCE ARTICLE VIII. UNION DETERRENCE

### **21-100 Policy.**

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It is the policy of the City of Burlington to limit letting contracts to organizations that provide union deterrence services to other companies.

(Ord. of 3-27-06/4-26-06)

### **21-101 Definitions.**

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(a) *Contractor or vendor.* A person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods), including any subcontractors of such contractor or vendor.

(b) *Government funded project.* Any contract for services which involves any City funds and the total amount of the contract is fifteen thousand dollars (\$15,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.

(c) *Union deterrence services.* Services provided by a contractor, subcontractor or vendor that are not restricted to advice concerning what activities by an employer are prohibited and permitted by applicable laws and regulations, but extend beyond such legal advice to encouraging an employer to do any of the following:

- 1) Hold captive audience, (i.e., mandatory) meetings with employees encouraging employees to vote against the union;
- 2) Have supervisors force workers to meet individually with them to discuss the union;
- 3) Imply to employees, whether through written or oral communication, that their employer may have to shut down or lay people off if the union wins the election;
- 4) Discipline or fire workers for union activity;
- 5) Train managers on how to dissuade employees from supporting the union.

(d) *Substantial portion of income.* For the purposes of this article, substantial portion of income shall mean greater than ten (10) percent of annual gross revenues or one hundred thousand dollars (\$100,000.00), whichever is less.



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(Ord. of 3-27-06/4-26-06)

### **21-102 Implementation.**

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(a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who

- 1) Advises or has advised an employer to conduct any illegal activity in its dealings with a union.
- 2) Advertises union deterrence services as specialty services;
- 3) Earns a substantial portion of its income by providing union deterrence services to other companies in order to defeat union organizing efforts.

(b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that it has not advised the conduct of any illegal activity, it does not currently, nor will it over the life of the contract provide union deterrence services in violation of this article.

(Ord. of 3-27-06/4-26-06)

### **21-103 Enforcement.**

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(a) Any contractor, subcontractor or vendor who files false or materially misleading information in connection with an application, certification or request for information pursuant to the provisions of this article or provided union deterrence services during the life of a contract for a government funded project shall be deemed to be in violation of this article.

(b) The City of Burlington shall have the right to modify, terminate and or seek specific performance of any contract for a government funded project if the contractor, subcontractor or vendor has not complied with this article.

(Ord. of 3-27-06/4-26-06)

### **21-104—21-110 Reserved.**

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## Attachment D

### Certification of Compliance with the City of Burlington's Union Deterrence Ordinance

I, \_\_\_\_\_, on behalf of \_\_\_\_\_ (Contractor) and in connection with \_\_\_\_\_ (City contract/project/grant), hereby certify under oath that \_\_\_\_\_ (Contractor) has not advised the conduct of any illegal activity, and it does not currently, nor will it over the life of the contract advertise or provide union deterrence services in violation of the City's union deterrence ordinance.

Dated at \_\_\_\_\_, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2015.

By: \_\_\_\_\_  
Duly Authorized Agent